

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 9. HEALTH SERVICES

#### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - ADMINISTRATION

#### PREAMBLE

1. Sections Affected

R9-22-1101	Amend
R9-22-1102	Amend
R9-22-1103	Amend
R9-22-1104	Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903.01(H)

Implementing statute: A.R.S. §§ 36-2918 and 36-2918.01
3. The effective date of the rules:

June 9, 1998
4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 4 A.A.R. 255, January 16, 1998.

Notice of Proposed Rulemaking: 4 A.A.R. 493, February 20, 1998.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name:	Cheri Tomlinson, Federal and State Policy Administrator
Address:	AHCCCS Administration, Office of Policy Analysis and Coordination 801 East Jefferson, Mail Drop 4200 Phoenix, Arizona 85034
Telephone:	(602) 417-4198
Fax:	(602) 256-6756
6. An explanation of the rules, including the agency's reasons for initiating the rules:

The 4 Sections (R9-22-1101 through R9-22-1104) in 9 A.A.C. 22, Article 11, that define the process for determining the amount of civil monetary penalties and assessments and the rights of parties involved, have been modified to:

  - Comply with recommendations made in the March 1993 5-Year-Review,
  - Reference rule to statute and the Code of Federal Regulations whenever possible, and
  - Provide clarification to rule language.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.
8. The summary of the economic, small business, and consumer impact:

A nominal economic impact and benefit to the following entities is anticipated as a result of the changes:

  - AHCCCS contractors,
  - AHCCCS providers,
  - AHCCCS members, and

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- AHCCCS Administration.
- Other entities considered, but which will not be directly impacted by the changes include:
  - Other governmental entities and political subdivisions, and
  - The general public, including taxpayers and private individuals.
- 9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):  
The changes between the proposed rules and the final rules are minimal. The differences between the proposed rule and final rule are grammatical, verb tense, and punctuation changes to make the rule more clear, concise, and understandable.
- 10. A summary of the principal comments and the agency response to them:  
The Agency received no formal comment regarding this rule package.
- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
- 12. Incorporations by reference and their location in the rules:  
None.
- 13. Was this rule previously adopted in an emergency rule?  
No.
- 14. The full text of the rules follows:

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - ADMINISTRATION**

**ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS**

Section

- R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims
- R9-22-1102. Determinations Regarding the Amount of the Penalty and Assessment
- R9-22-1103. Notice of Proposed Determination and Rights of Parties
- R9-22-1104. Issues and burden of proof Burden of Proof

**ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS**

**R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

- ~~A. Pursuant to A.R.S. § 36-2918, the Director may impose a penalty and assessment against any person whom he determines in accordance with this Article has presented or caused to be presented a claim which is for a medical item or service:~~
- ~~1. That the person knew or had reason to know was not provided as claimed; or~~
  - ~~2. That the person knew or had reason to know was false or fraudulent; or~~
  - ~~3. For which the person knew or had reason to know that no payment could be made by the system because:~~
    - ~~a. The person was terminated or suspended from participation in the system on the date for which the claim is being made; or~~
    - ~~b. The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care; or~~
  - ~~4. For a physician's service, or an item or service incidental to a physician's service, by a person who knew or had reason to know that the individual who furnished or~~

~~supervised the furnishing of the service was not licensed to provide or to supervise the provision of the service or that the individual obtained his license through a misrepresentation of material fact, or represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified; or~~

- ~~5. For which the person knew or had reason to know that no payment could be made by the system because the request for payment is in violation of an agreement between the person and this state or the Administration.~~

~~A. Circumstances for imposing a penalty and assessment. The Director or designee shall impose a penalty and assessment under the circumstances described in A.R.S. § 36-2918. For the purposes of this Article, the term "reason to know" means that a person, with respect to information, acts in deliberate ignorance of the truth or falsity of the information or with reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.~~

~~B. The Director's determination that the person knew or had reason to know that payment for claimed medical items or services could not be made by the system shall be made in the following circumstances:~~

- ~~1. The person was suspended from participation in the system on the date that the claimed item or services were provided; or~~
- ~~2. The claimed items or services were substantially in excess of the needs of the patient as determined by a medical panel convened by the Director; or~~
- ~~3. The claimed items or services were deficient in quality compared with professionally recognized standards of health care as determined by a medical panel convened by the Director.~~

~~C.B. Violation of agreement. The Director or designee's determination of whether a person knew or had reason to know that medical items each claim or services were request for payment was claimed in violation of an agreement~~

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with this state Arizona, or the Administration, or a contractor may be based on the terms of the agreement.

**R9-22-1102. Determinations Regarding the Amount of the Penalty and Assessment**

**A.** In determining the amount of any penalty or assessment, the Director or designee shall take into account, in accordance with this Section:

1. The nature of the claim or request for payment and the circumstances under which it was presented;
2. The degree of culpability of the person submitting the claim or request for payment;
3. The history of prior offenses of the person submitting the claim or request for payment;
4. The financial condition of the person presenting the claim or request for payment; and
5. Such other matters as justice may require.

**B.** Guidelines for determining the amount of a penalty or assessment. As guidelines for taking into account the factors listed in subsection (A) of this Section, the following circumstances shall be considered:

1. Nature and circumstances of the claim. It shall be considered a mitigating circumstance if all the items or services subject to a penalty and assessment under this Article were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than \$1,000. It shall be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the total amount claimed for such items or services was \$1,000 or more.
2. Degree of culpability. It shall be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process the person followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It shall be considered an aggravating circumstance if the person knew the item or service was not provided as claimed, or if the person knew that no payment could be made because he had been excluded from system reimbursement or because payment would violate the terms of an agreement between the person and this state or the Administration.
3. Prior offenses. It shall be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a penalty and assessment under this Article, the person was held liable for criminal, civil, or administrative sanctions in connection with a Medicaid or Medicare program or any other public or private program of reimbursement for medical services.
4. Financial condition. It shall be considered a mitigating circumstance if imposition of the penalty or assessment without reduction will jeopardize the ability of the person to continue as a health care provider. The resources available to the person may be considered when determining the amount of the penalty and assessment.
5. Other matters as justice may require. Other circumstances of an aggravating or mitigating nature shall be taken into account if, in the interest of justice, they require either a reduction of the penalty or assessment or an increase in order to assure the achievement of the purposes of this Article.

**C.** Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment shall never be less than double the approximate amount of damages sustained by this state or the Administration, as a result of claims subject to the penalty and assessment.

**A.** Factors for determining a penalty and assessment. The Director or designee shall take into account the following factors in determining the amount of a penalty and assessment:

1. The nature of each claim or request for payment and the circumstances under which it is presented or caused to be presented.
2. The degree of culpability of a person who presents or causes to present each claim or request for payment.
3. The history of prior offenses of a person who presents or causes to present each claim or request for payment.
4. The financial condition of a person who presents or causes to present each claim or request for payment.
5. The effect on patient care resulting from the failure to provide medically necessary care by a person who presents or causes to present each claim or request for payment, and
6. Other matters as justice may require.

**B.** Types of claim circumstances. In determining the amount of a penalty and assessment, the Director or designee shall consider both mitigating circumstances and aggravating circumstances surrounding the presentation or cause for presentation of each claim or request for payment.

**C.** Mitigating circumstance guidelines. The Director or designee shall consider the following mitigating circumstance guidelines when determining the amount of a penalty and assessment:

1. Nature and circumstances of each claim or request for payment. The nature and circumstances of each claim or request for payment and the circumstances under which it is presented or is caused to be presented are a mitigating circumstance if:
  - a. All the items and services subject to a penalty and assessment are of the same type.
  - b. All the items and services subject to a penalty and assessment occurred within a short period of time.
  - c. There are few items and services, and
  - d. The total amount claimed for the items and services is less than \$1,000.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present a claim or request for payment is a mitigating circumstance if:
  - a. Each item or service is the result of an unintentional and unrecognized error in the process the person followed in presenting or in causing to present the item or service.
  - b. Corrective steps were taken promptly after the error was discovered, and
  - c. A fraud and abuse control plan was adopted and operating effectively at the time each claim or request for payment was presented or caused to be presented.
3. Financial condition. The financial condition of a person who presents or causes to present a claim or request for payment is a mitigating circumstance if the imposition of a penalty and assessment without reduction will jeopardize the ability of the person to continue as a health care provider. The resources available to the person may be considered when determining the amount of the penalty and assessment; or

4. Other matters as justice may require. Other circumstances of a mitigating nature will be taken into account if, in the interest of justice, the circumstances require a reduction of the penalty and assessment.
- D. Aggravating circumstance guidelines. The Director or designee shall consider the following aggravating circumstance guidelines when determining the amount of a penalty and assessment:
  1. Nature and circumstances of each claim or request for payment. The nature and circumstances of each claim or request for payment and the circumstances under which it is presented or caused to be presented are an aggravating circumstance if:
    - a. The items and services subject to a penalty and assessment are of several types.
    - b. The items and services subject to a penalty and assessment occurred over a lengthy period of time.
    - c. There are many items or services (or the nature and circumstances indicate a pattern of claims for the items or services), or
    - d. The total amount claimed for the items and services is \$1,000 or greater.
  2. Degree of culpability. The degree of culpability of a person who presents or causes to present each claim or request for payment is an aggravating circumstance if:
    - a. The person knew that each item or service was not provided as claimed.
    - b. The person knew that no payment could be made because the person had been excluded from System reimbursement, or
    - c. Payment would violate the terms of an agreement between the person and Arizona, the Administration or a contractor.
  3. Prior offenses. The prior offenses of a person who presents or causes to present each claim or request for payment is an aggravating circumstance if, at any time before the presentation of any claim or request for payment subject to a penalty and assessment under this Article, the person was held liable for a criminal, civil, or administrative sanction in connection with:
    - a. A Medicaid program.
    - b. A Medicare program, or
    - c. Any other public or private program of reimbursement for medical services;
  4. Effect on patient care. The seriousness of an adverse effect that resulted, or could have resulted, from the failure of a person who presents or causes to present a claim or request for payment to provide medically necessary care is an aggravating circumstance; or
  5. Other matters as justice may require. Other circumstances of a aggravating nature will be taken into account if, in the interest of justice, the circumstances require an increase of the penalty and assessment.
- E. Amount of Penalty and Assessment. The aggregate amount of a penalty and assessment shall never be less than double the approximate amount of damages sustained by Arizona, the Administration or contractor, unless there are extraordinary mitigating circumstances.
- F. Compromise. The Director or designee may compromise a penalty and assessment using the guidelines in subsections (C) and (D).

**R9-22-1103. Notice of Proposed Determination and Rights of Parties**

- A. If the Director or designee proposes to impose a penalty or assessment in accordance with this Article, the Director or designee must deliver or send by certified mail, return receipt requested, to the person, written notice of intent to impose a penalty or assessment. The notice shall include reference to the statutory basis for the penalty and assessment; description of the claims and requests for payment with respect to which the penalty and assessment are proposed; the reason why such claims and requests for payment subject the person to such penalty and assessment; and the amount of the proposed penalty and assessment.
- A. Administration's Responsibilities. If the Director or designee proposes to impose a penalty and assessment, the Director or designee shall deliver or send by certified mail, return receipt requested, to a person, written notice of intent to impose a penalty and assessment. The notice shall include:
  1. Reference to the statutory basis for the penalty and assessment.
  2. A description of each claim or request for payment for which the penalty and assessment are proposed.
  3. The reason why each claim or request for payment subjects the person to a penalty and assessment, and
  4. The amount of the proposed penalty and assessment.
- B. Individual's Responsibilities. A person may submit within 35 days of the date of receipt of the notice from the date of the notice of intent to impose a penalty and assessment: the person may submit
  1. A written statement accepting imposition of the penalty and assessment, or
  2. A written request for a compromise of the penalty and assessment stating any reasons which that the person contends should result in a reduction or modification of the penalty and assessment. If such a request is submitted, the time period for filing an appeal and request for hearing pursuant according to subsection (C) of this Section shall be tolled until the Director's or designee's decision on the request for compromise, or
  3. An appeal and request for hearing A grievance in accordance with the provider grievance provision set forth in Article 8 of AHCCGS rules this Chapter.
- C. The Director or designee may impose a proposed penalty and assessment or any less severe penalty and assessment If if the a person does not request a hearing within the time prescribed by paragraphs subsections (B)(2) or (B)(3), the Director or designee may impose the proposed penalty and assessment or any less severe penalty and assessment. The A person has no right to appeal a penalty and assessment with respect to which the if the person has not timely requested a hearing.

**R9-22-1104. Issues and burden of proof Burden of Proof**

- A. Preponderance of Evidence. In any hearing conducted pursuant according to this Article, the Director or designee must shall prove by a preponderance of the evidence that the a person who requested the a hearing presented or caused to be presented claims each claim or request for payment in violation of Section A.A.C. R9-22-1101 of this Article. The A person who requested requests the a hearing shall bear the burden of producing and proving by a preponderance of the evidence any eircumstances circumstance that would justify reducing the amount of the penalty and assessment.
- B. Statistical sampling.
  1. The Director or designee may introduce the results of a statistical sampling study as evidence of the number and amount of claims or requests for payment that were pre-

mented or caused to be presented by the person in meeting the burden of proof described in subsection (A). A statistical sampling study shall constitute prima facie evidence of the number and amount of claims or requests for payment, if based upon an appropriate sampling and computed by valid statistical methods.

2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once the Director or designee has made a prima facie case as described in subsection (A). The Director or designee will be given the opportunity to rebut this evidence.

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### TITLE 9. HEALTH SERVICES

#### CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

##### PREAMBLE

1. Sections Affected

R9-28-1001	Amend
R9-28-1002	Repeal
R9-28-1003	Repeal
R9-28-1004	Repeal
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2932(P)  
Implementing statute: A.R.S. § 36-2957
3. The effective date of the rules:

June 9, 1998
4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 1 A.A.R. 2764, December 22, 1995 and 4 A.A.R. 256, January 16, 1998.  
Notice of Proposed Rulemaking: 4 A.A.R. 504, February 20, 1998.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheri Tomlinson, Federal and State Policy Administrator  
Address: AHCCCS Administration  
Office of Policy Analysis and Coordination  
801 East Jefferson, Mail Drop 4200  
Phoenix, Arizona 85034  
Telephone: (602) 417-4198  
Fax: (602) 256-6756
6. An explanation of the rule, including the agency's reasons for initiating the rule:

The 4 Sections (R9-28-1001 through R9-28-1004) in 9 A.A.C. 28, Article 10, which define the process for determining the amount of civil monetary penalties and assessments and the rights of parties involved, have been combined into 1 Section, R9-28-1001. The changes:

  - Delete existing language and reference the Article to ALTCS-related statute (A.R.S. § 36-2957) and acute care rule (9 A.A.C. 22, Article 11), and
  - Comply with recommendations made in the March 1995 5-Year-Review.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.
8. The summary of the economic, small business, and consumer impact:

A nominal economic impact is anticipated from the proposed changes which are designed to provide clarity and consistency to the language and make it easier for the following parties to use:

  - ALTCS contractors,
  - ALTCS providers,
  - ALTCS members, and

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- AHCCCS Administration.
- Other entities considered, but which will not be directly impacted by the changes include:
  - Other governmental entities and political subdivisions, and
  - The general public, including taxpayers and private individuals.
- 9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):  
The changes between the proposed rules and the final rules are minimal. The differences between the proposed rule and final rule are grammatical, verb tense, and punctuation changes to make the rule more clear, concise, and understandable.
- 10. A summary of the principal comments and the agency response to them:  
The Agency received no formal comment regarding this rule package.
- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
- 12. Incorporations by reference and their location in the rules:  
None.
- 13. Was this rule previously adopted as an emergency rule?  
No.
- 14. The full text of the rules follows:

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)  
ARIZONA LONG-TERM CARE SYSTEM**

**ARTICLE 10. CIVIL MONETARY PENALTIES AND  
ASSESSMENTS**

Section

- R9-28-1001. ~~Basis for civil monetary penalties and assessments for fraudulent claims~~ Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims
- R9-28-1002. ~~Determinations Regarding the Amount of the Penalty and Assessment~~ Repealed
- R9-28-1003. ~~Notice of Proposed Determination and Rights of Parties~~ Repealed
- R9-28-1004. ~~Issues and Burden of Proof~~ Repealed

**ARTICLE 10. CIVIL MONETARY PENALTIES AND  
ASSESSMENTS**

**R9-28-1001. ~~Basis for civil monetary penalties and assessments for fraudulent claims~~ Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

- A.** ~~The Director's determination that the person knew that payment for claimed medical items or services could not be made by the System shall be made in the following circumstances:~~
  - 1. ~~The person knew that the individual receiving claimed services was not a member on the date that the claimed items or services were provided; or~~
  - 2. ~~The claimed items or services were substantially in excess of the needs of the patient as determined by a medical panel convened by the Director; or~~
  - 3. ~~The claimed items or services were deficient in quality compared with professionally recognized standards of health care as determined by a medical panel convened by the Director.~~
- B.** ~~The Director's determination of whether a person knew that medical items or services were claimed in violation of an agreement with the Administration or the program contractor may be based on the terms of the agreement.~~

The Director or designee shall impose a penalty and assessment under the circumstances described in A.R.S. § 36-2957. The Administration shall use the procedures detailed in 9 A.A.C., 22, Article 11, for the determination and collection of civil penalties and assessments.

**R9-28-1002. Determinations Regarding the Amount of the Penalty and Assessment**

- A.** ~~In determining the amount of any penalty or assessment, the Director or designee shall take into account, in accordance with this Section:~~
  - 1. ~~The nature of the claim or request for payment and the circumstances under which it was presented;~~
  - 2. ~~The degree of culpability of the person submitting the claim or request for payment;~~
  - 3. ~~The history of prior offenses of the person submitting the claim or request for payment; and~~
  - 4. ~~The financial condition of the person presenting the claim or request for payment.~~
- B.** ~~Guidelines for determining the amount of a penalty or assessment. As guidelines for taking into account the factors listed in subsection (A), the following circumstances shall be considered:~~
  - 1. ~~Nature and circumstances of the claim. It shall be considered a mitigating circumstance if all the items or services subject to a penalty and assessment under this Article were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than \$1,000. It shall be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services or the nature and circumstances indicate a pattern of claims for such items or services, or the total amount claimed for such items or services was \$1,000 or more.~~



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2. ~~Degree of culpability. It shall be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process the person followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It shall be considered an aggravating circumstance if the person knew the item or service was not provided as claimed, or if the person knew that no payment could be made because he had been excluded from System reimbursement or because payment would violate the terms of an agreement between the person and this state or the Administration.~~
  3. ~~Prior offenses. It shall be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a penalty and assessment under this Article, the person was held liable for criminal, civil, or administrative sanctions in connection with a Medicaid or Medicare program or any other public or private program of reimbursement for medical services.~~
  4. ~~Financial condition. It shall be considered a mitigating circumstance if imposition of the penalty or assessment without reduction will jeopardize the ability of the person to continue as a health care provider. The resources available to the person may be considered when determining the amount of the penalty and assessment.~~
  5. ~~Other matters as justice may require. Other circumstances of an aggravating or mitigating nature shall be taken into account if, in the interest of justice, they require either a reduction of the penalty or assessment or an increase in order to assure the achievement of the purposes of this Article.~~
- C. ~~Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment shall never be less than double the approximate amount of damages sustained by this state or the Administration, as a result of claims subject to the penalty and assessment.~~

**R9-28-1003. Notice of Proposed Determination and Rights of Parties**

- A. ~~If the Director or designee proposes to impose a penalty or assessment in accordance with this Article, the Director or designee shall deliver or send by certified mail, return receipt requested, to the person, written notice of intent to impose a penalty or assessment. The notice shall include reference to the statutory basis for the penalty and assessment, description of the claims, and requests for payment with respect to which the penalty and assessment are proposed, the reason why such claims and requests for payment subject the person to such penalty and assessment, and the amount of the proposed penalty and assessment.~~
- B. ~~Within 35 days of the date of receipt of the notice, the person may submit:~~
  1. ~~A written statement accepting imposition of the penalty and assessment; or~~
  2. ~~A written request for a compromise of the penalty and assessment stating any reasons which the person contends should result in a reduction or modification of the penalty and assessment. If such a request is submitted, the time period for filing an appeal and request for hearing pursuant to subsection (C) shall be tolled until the Director's decision on the request for compromise; or~~
  3. ~~An appeal and request for hearing in accordance with the provider grievance provision set forth in Article 8.~~
- C. ~~If the person does not request a hearing within the time prescribed by paragraph (B)(2) or (3), the Director or designee may impose the proposed penalty and assessment or any less severe penalty and assessment. The person has no right to appeal a penalty and assessment with respect to which the person has not timely requested a hearing.~~

**R9-28-1004. Issues and Burden of Proof**

~~In any hearing conducted pursuant to this Article, the Director shall prove by a preponderance of the evidence that the person who requested the hearing presented or caused to be presented claims in violation of R9-28-1001. The person who requested the hearing shall bear the burden of producing and proving by a preponderance of the evidence any circumstances that would justify reducing the amount of the penalty or assessment.~~

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**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**PREAMBLE**

1. **Sections Affected**  
R12-4-106
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

**Rulemaking Action**  
New Section

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statutes: A.R.S. Title 41, Chapter 6, Article 7.1.

The specific authorizing statutes for each license specified in R12-4-106 are as follows:

Aquatic Wildlife Stocking Permit	A.R.S. §§ 17-238, 17-306
Challenged Hunter Access/Mobility Permit	A.R.S. §§ 17-102, 17-301(B)
Crossbow Permit	A.R.S. § 17-102

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Disabled Veteran's License	A.R.S. § 17-336(2)
Falconer License	A.R.S. § 17-238
Field Trial License	A.R.S. §§ 17-231(B)(8), 17-238, 17-306
Field Trial Training Permit	A.R.S. §§ 17-231(B)(8), 17-238, 17-306
Fishing Permits	A.R.S. § 17-331
Guide License	A.R.S. § 17-362
License Dealer's License	A.R.S. §§ 17-333(A)(33), 17-334, 17-339
Minnow Dealer's License	A.R.S. § 17-231(B)(8)
Pioneer License	A.R.S. § 17-336(1)
Private Game Farm License	A.R.S. §§ 17-238, 17-306, 17-307
Scientific Collecting Permit	A.R.S. §§ 17-238, 17-231(B)(8), 17-306
Shooting Preserve License	A.R.S. §§ 17-231(B)(8), 17-238, 17-306
Tournament Fishing Permit	A.R.S. §§ 17-309(A)(23), 17-347
Watercraft Agents	A.R.S. §§ 5-311(A)(5) and 5-321(E)
White Amur Stocking License	A.R.S. §§ 17-317, 17-306
Wildlife Hobby License	A.R.S. §§ 17-231(B)(8), 17-238, 17-306, 17-333(A)(24)
Wildlife Holding Permit	A.R.S. §§ 17-231(B)(8), 17-238, 17-306
Wildlife Rehabilitation License	A.R.S. §§ 17-238, 17-306
Wildlife Service License	A.R.S. §§ 17-102, 17-238, 17-239, 17-306
Zoo License	A.R.S. §§ 17-238, 17-306

3. **The effective date of the rules:**

June 10, 1998

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Docket Opening: 3 A.A.R. 3262, November 14, 1997.

(Note: Second notice included section number) 3 A.A.R. 3297, November 21, 1997.

Notice of Proposed Rulemaking: 4 A.A.R. 77, January 9, 1998.

The date the record was closed: March 28, 1998.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Susan L. Alandar, Administrative Services Manager

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6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

In 1996 the Legislature passed S.B. 1056, which requires State agencies to adopt by rule time-frames for reviewing and issuing licenses. In response to this, an inventory of all licenses, permits, registrations, etc. was created and then each was evaluated to determine if it constituted a "license" as contemplated by A.R.S. § 41-1073. (A memo to the Department Director from the Administrator for GRRC dated November 15, 1996 stated: "The determination of what does or does not constitute a license rests with your agency.") Proposed R12-4-106 contains the final listing of those licenses which fall under the requirements of the new law. They are arranged alphabetically, to make it easier for the reader to find the license of interest, with a cross-reference to the governing rule which contains application procedures, criteria, and other relevant requirements.

The majority of the Commission's rules for licensing already contain very specific application procedures and very specific overall time-frames. What was generally missing from the rules was the "administrative completeness review time-frame" required by the new law. It is therefore proposed to adopt a single new section (R12-4-106), a "matrix" providing the time-frames for all licenses affected by the new law.



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**What is not addressed in the rule.** According to the legislation, time-frames are required only for licenses that require an application for processing. The new language in A.R.S. § 41-1073 prescribes that...

{n}o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an *overall time-frame* during which the agency will either grant or deny each type of license that it issues. (Emphasis added.)

The definition of "overall time-frame" is "the number of days after receipt of an *application* for a license during which an agency determines whether to grant or deny a license." Critical to the analysis is whether a license requires an application, or whether a license is summarily issued upon request. The Department does issue some licenses based upon review of an application, and under this statute has developed time-frames. However, where the Department does not require an application for issuing a license, which includes most hunting and fishing licenses, the Department is not required to develop time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

**Reasoning for time-frames.** The language of new A.R.S. § 41-1073 (C) was carefully considered in reviewing and establishing the time-frames in new R12-4-106. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. The majority of these licenses are issued from regional offices, which allows a more responsive approach to local needs, but also means there are less personnel doing more varied types of work. Some reviews must be done by biologists who are also assigned field work. For this reason the time-frames given are "maximum", to allow for situations where the assigned person may not be available for licensing duties. It is extremely rare that the fully allotted time-frames must be used, particularly when the administrative completeness review is generally all that is necessary. In other words, if all required documentation and information is submitted, the license is issued, as there are no other criteria for denial. Such licenses are issued directly from the same "front counter" that sells hunting and fishing licenses, tags, and stamps, which are this agency's source of revenue. (The Department does not share in the general fund, but is self-supporting.) Licenses which fall into this category include:

Challenged Hunter Access/Mobility Permit

Crossbow Permit

Disabled Veteran's License

Pioneer License

All of these are licenses for personal activities, not business licenses. The administrative completeness review time-frame is only 1 day for these licenses. The substantive review time-frame remains necessary in the event there is question regarding the information or documentation. For instance, the "pioneer" license is authorized by A.R.S. § 17-336 (1) and is a free hunting and fishing license for persons 70 years of age or older who have been a resident of this state for 25 or more consecutive years immediately preceding application for the license. The value of this license to a nonresident who might obtain it fraudulently is \$112.00. Attempts have been made by nonresident winter visitors to obtain a Pioneer license.

The following licenses require a more substantive review after the application has been reviewed for completeness, by biologists and/or other specialized personnel who may not always be immediately available. Again, these are "maximum" time-frames and the rule specifies that review and issuance may be conducted and completed sooner. All but 1 of these licenses can be subdivided into 4 basic categories: personal use only (nonprofit); scientific or research (generally no commercial connection); commercial (licenses necessary to conduct a business or part of a business); and those which may be for personal use or may be for a commercial use.

<u>Personal Use</u>	<u>Scientific/Research</u>	<u>Commercial</u>	<u>Personal or Commercial</u>
<u>Falconer License</u>	<u>Scientific Collecting Permit</u>	<u>Guide License</u>	<u>Aquatic Wildlife Stocking Permit</u>
<u>Fishing Permit</u>	<u>Wildlife Holding Permit</u>	<u>License Dealer's License</u>	<u>Field Trial License</u>
<u>Wildlife Hobby License</u>	<u>Wildlife Rehabilitation License</u>	<u>Minnow Dealer's License</u>	<u>Field Trial Training Permit</u>
		<u>Private Game Farm License</u>	<u>Tournament Fishing Permit</u>
		<u>Shooting Preserve License</u>	<u>White Amur Stocking License</u>
		<u>Watercraft Agent</u>	
		<u>Wildlife Service License</u>	
		<u>Zoo License</u>	

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Thirty days is the standard maximum overall time-frame. Those which may take longer are the Aquatic Wildlife Stocking Permit, the Wildlife Rehabilitation License, and the Wildlife Service License. The reason for the extended time-frame lies in the unusual activities allowed under each license.

R12-4-410, which governs the Aquatic Wildlife Stocking Permit, specifies a general time-frame of 30 days unless the extended substantive review time-frame of 170 days is necessary because the request is for stocking aquatic wildlife which has never previously been introduced in the state or do not occur at the location where the stocking is to take place. The rule requires that the Department let the applicant know within 10 days (the administrative review time-frame) whether the extended period for approval or denial will be necessary.

The Wildlife Rehabilitation License (governed by R12-4-423) may take up to 60 days to issue or deny. It may allow possession and rehabilitation of delicate species or even threatened or endangered species protected by federal law and so requires special attention. And finally, the Wildlife Service License (R12-4-421) is extremely unique in that it allows live capture and release of live wildlife, something normally prohibited by A.R.S. § 17-306. Applicants must be screened carefully.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

No economic impact is expected from this proposed new section.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The typographical error "White Amer. Stocking License," which was further compounded in the *Arizona Administrative Register* as the "White American Stocking License," has been corrected to the proper "White Amur Stocking License" in the final rule.

Rule language addressing the "Questionnaire for Evaluation of Administrative Control Systems" was removed. The rulemaking process for the proposed new section which required the license, R12-4-713, was terminated by the Arizona Game and Fish Commission on March 28, 1998.

10. A summary of the principal comments and the agency response to them:

1. **Argument.** I obtained my guide license in 10 days and think this is a very satisfactory process period.

**Evaluation.** Agreed. As stated in the rule, licenses may be issued (or denied) in less time than the maximum allowed. The Department strives always for quick and efficient processing of all applications.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Section

R12-4-106. Licensing Time-frames

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**R12-4-106. Licensing Time-frames**

- A. As required by A.R.S. § 41-1072 et seq., the Department shall either grant or deny the following licenses within the listed time-frames. All periods listed are calendar days, and all are maximum time periods. Licenses may be reviewed and issued or denied in less time.

<u>Name of License</u>	<u>Govern- ing Rule</u>	<u>Adminis- trative Com- pleteness Review Time- Frame</u>	<u>Sub- stan- tive Review Time- Frame</u>	<u>Over- all Time- Frame</u>
Aquatic Wildlife Stocking Permit	R12-4-410	10 days	170 days	180 days

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<u>Name of License</u>	<u>Govern- ing Rule</u>	<u>Adminis- trative Com- pleteness Review Time- Frame</u>	<u>Sub- stan- tive Review Time- Frame</u>	<u>Over- all Time- Frame</u>
Chal- lenged Hunter Access/ Mobility Permit	R12-4-217	1 day	29 days	30 days
Cross- bow Per- mit	R12-4-216	1 day	29 days	30 days
Disabled Vet- eran's License	R12-4-202	1 day	29 days	30 days
Falconer License	R12-4-422	10 days	20 days	30 days
Field Trial License	R12-4-415	10 days	20 days	30 days
Field Trial Training Permit	R12-4-416	10 days	20 days	30 days
Fishing Permits	R12-4-310	10 days	20 days	30 days
Guide License	R12-4-208	10 days	20 days	30 days
License Dealer's License	R12-4-105	10 days	20 days	30 days
Minnow Dealer's License	R12-4-411	10 days	20 days	30 days
Pioneer License	R12-4-201	1 day	29 days	30 days
Private Game Farm License	R12-4-413	10 days	20 days	30 days

Scien- tific Col- lecting Permit	R12-4-418	10 days	20 days	30 days
Shooting Preserve License	R12-4-414	10 days	20 days	30 days
Tourna- ment Fishing Permit	R12-4-215	10 days	20 days	30 days
Water- craft Agents	R12-4-509	10 days	20 days	30 days
White Amur Stocking License	R12-4-424	10 days	20 days	30 days
Wildlife Hobby License	R12-4-419	10 days	20 days	30 days
Wildlife Holding Permit	R12-4-417	10 days	20 days	30 days
Wildlife Rehabili- tation License	R12-4-423	10 days	50 days	60 days
Wildlife Service License	R12-4-421	10 days	50 days	60 days
Zoo License	R12-4-420	10 days	20 days	30 days

- B.** Issuance of Special License Tags is governed by R12-4-120. Proposals are accepted between July 1 and September 30 of each year. Administrative review is completed by the Department within 5 days. The Game and Fish Commission makes its decision on issuance or denial in an open meeting within 30 days after the closing date for proposals. The substantive review time-frame is 115 days and the overall time-frame is 120 days.